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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 554

JOAO FREIRE SINEIRO, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 28-30) is not yet reported.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on November 27, 1951 (R. 31). The petition for a writ of certiorari was filed on January 26, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1] An earlier opinion of the Court of Appeals (R. 21-26) denying the Government's motion to dismiss petitioner's appeal is reported at 190 F. 2d 397 (C. A. 3).

QUESTION PRESENTED

While in custody in Philadelphia, Pennsylvania, under an administrative deportation warrant regularly issued, petitioner, an alien, made a signed, self-incriminating statement to an immigration agent concerning his entry into the United States. Subsequently, he was charged before a United States Commissioner in Baltimore, Maryland, with the offense of having illegally entered the United States, and a warrant for his arrest was issued by the Baltimore Commissioner. In a proceeding on this warrant under Rule 40(a), Federal Rules of Criminal Procedure, held before a United States Commissioner in Philadelphia, Pennsylvania, petitioner's self-incriminating statement was testified to and offered in evidence and the Commissioner held him to answer to the District Court in Maryland.

The question presented is whether petitioner is entitled, in an independent proceeding, to have his self-incriminating statement suppressed and the Baltimore warrant quashed because he was not expressly advised by the immigration agent that he had a right to remain silent and consult counsel, although before being questioned by the agent he was cautioned that any statement he might make must be voluntary and might be used against him in a civil or criminal proceeding.

STATEMENT

On September 12, 1950, petitioner was arrested in Philadelphia, Pennsylvania, on a deportation warrant charging that he was in the United States in violation of the Passport Act in that he had not presented an unexpired passport or other document, but had entered as a stowaway and without inspection (R. 13-14, 22). Two days later he was interrogated by an agent of the Immigration and Naturalization Service (Pet. 2) and gave a signed statement admitting that he had entered the United States illegally (R. 28).

On November 20, 1950, a warrant for the arrest of petitioner was issued by a United States Commissioner in Baltimore, Maryland, upon a complaint charging him with entering the United States without inspection by an immigration inspector.[2] On the same day, petitioner was arrested on this warrant and immediately arraigned before a United States Commissioner in Philadelphia. (R. 21-22, 28-29.) At this hearing, an official of the Immigration and Naturalization

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[2] 8 U. S. C. 180a: "Any alien who after March 4, 1929, enters the United States at any time or place other than as designated by immigration officials or eludes examination or inspection by immigration officials, or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000, or by both such fine and imprisonment."

Service testified, over the objection of petitioner's counsel, as to the statement previously made by petitioner after his arrest on the deportation warrant. The written statement was also offered in evidence. No other evidence was offered. (R. 15-16, 22.) The Commissioner held petitioner in $500 bail to answer to the District Court in Baltimore (R. 3, 29; see Rule 40(a), F.R. Crim. P).

On November 28, 1950, petitioner filed a motion in the District Court for the Eastern District of Pennsylvania to quash the warrant of arrest and to suppress the use of his statement (R. 2-3). After a hearing the following day, the District Court denied the motion (R. 29). Its order was affirmed by the Court of Appeals for the Third Circuit on November 27, 1951 (R. 28-31).

We are advised that meanwhile, on December 13, 1950, the United States Attorney in Baltimore filed an information charging petitioner with a violation of 8 U.S.C. 180a. Petitioner has not been arraigned on this information because of the pendency of the present proceeding.

ARGUMENT

Petitioner's sole contention here (Pet. 4), as in the courts below (see R. 5, 8, 29), is that his self-incriminating statement should have been suppressed and the Baltimore Commissioner's warrant quashed because he was not advised, be-

fore he made the statement, of his rights to counsel and to remain silent.

At the outset, it is to be noted that criminal proceedings against petitioner have not advanced beyond the stage of the filing of an information. Meanwhile, the deportation proceeding is still pending.[3] It is not at all certain that any attempt will be made to use the statement in the criminal prosecution, if it is pressed.[4] And even if the statement should be offered in proof of the criminal charge, petitioner will have the same right to object and to preserve his objection for appellate review in the event he should be convicted.[5] Hence, it would seem that petitioner's motion to suppress was premature.

In any event, we think the courts below were right in holding that there was no transgression of petitioner's rights in the manner in which he was interrogated by the immigration agent following his arrest on the deportation warrant. At the out-

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[3] A hearing was held on the deportation warrant on October 4, 1950 (Pet. 8), and we are advised that the matter is now pending before the Commissioner for decision.

[4] See the statement of Francis W. Braden, who represented the Immigration and Naturalization Service at the hearing on petitioner's motion (R. 13): "* * * in the statement that is at issue here, it will never be used, in all probability, at the trial of this man, if and when he comes to trial, because direct testimony will be furnished at the trial."

[5] See the statement of the District Court below (R. 9): "You still have the right to object to anything further when the matter comes to trial and in the proper forum. * * *"

set of the interrogation petitioner was cautioned in the following words (R. 29):

> You are informed that I am an officer of the United States Immigration and Naturalization Service * * * I desire to take a statement from you * * * Any statement which you make must be voluntary on your part and may be used in any proceedings the Government may see fit to institute, whether civil or criminal. Are you willing to make such a statement freely and voluntarily under oath?

It is true that petitioner was not advised in so many words that he need not speak at all. He was, however, advised that any statements that he might make must be voluntary and might be used against him. This, in itself, was an obvious caution that any statement forthcoming must be of petitioner's own free will and without compulsion. The question which followed, "Are you willing to make such a statement freely and voluntarily under oath," plainly advised petitioner that he was not required to answer any questions or make any statement at all. These cautions and petitioner's willingness freely to make his sworn statement unquestionably imply, not only that he knew he was not required to speak unless he so desired, but that he was, despite that knowledge, willing to answer the agent's questions. Accordingly, in view of the absence of any evidence that petitioner did not

understand the plain meaning of these words when translated into his own language, his contention is without merit.[6]

Moreover, the cases uniformly hold that while the Government may practice no deception, fraud, or duress upon an accused in order to obtain evidence, it is not required to advise him of his constitutional privilege against self-incrimination, and a statement, otherwise voluntary, will not be rendered inadmissible by the mere failure to so apprise him. *Powers* v. *United States,* 223 U.S. 303, 314; *Wilson* v. *United States,* 162 U.S. 613, 623; *Hanson* v. *United States,* 186 F. 2d 61, 64-65 (C.A. 8); *United States* v. *Freeman,* 167 F. 2d 786, 790-791 (C.A. 7), certiorari denied, 335 U.S. 817; *Pulford* v. *United States,* 155 F. 2d 944, 947-948 (C.A. 6); *United States* v. *Klinger,* 136 F. 2d 677, 678 (C.A. 2), certiorari denied, 320 U.S. 746; *United States* v. *Block,* 88 F. 2d 618, 620 (C.A. 2), certiorari denied, 301 U.S. 690.[7]

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[6] It appears that petitioner is a Portuguese with little or no knowledge of the English language (R. 29). However, no question is raised by petitioner as to the competency of the interpreter or that the investigator's words were not properly interpreted to him (R. 8).

[7] *Wood* v. *United States,* 128 F. 2d 265 (C. A. D. C.), upon which petitioner relies (Pet. 5-6), is clearly distinguishable, for there the defendants were required to enter a plea upon preliminary hearing before the magistrate. Here, on the other hand, as we have shown, petitioner was told that he was not required to make any statement. Moreover, the statement has not been used against him. The statement in *Petition of F.,* 73 F. Supp. 655 (S. D. N. Y.), upon which petitioner also relies (Pet. 5), is a dictum.

Finally, although we have found no cases directly in point, petitioner's objection, based upon the failure of the investigating officer to advise petitioner that he could seek counsel before making any statement, would seem to be equally without support in law. Cf. *Wilson* v. *United States,* 162 U.S. 613, 616, 624. So long as no coercive methods by threats or inducements to confess are employed, constitutional requirements do not forbid examination in private of those in lawful custody or the use as evidence of information voluntarily given. *United States* v. *Carignan,* 342 U.S. 36, 39; *McNabb* v. *United States,* 318 U.S. 332, 346; *Lisenba* v. *California,* 314 U.S. 219, 239; *Ziang Sung Wan* v. *United States,* 266 U.S. 1, 14. It does not appear that petitioner's statement, rendered during his legal custody in connection with deportation proceedings, was otherwise than voluntary.[8]

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[8] The *McNabb* rule, which petitioner also invokes (Pet. 6-8), is clearly inapplicable for petitioner was lawfully in custody under the deportation warrant. *United States* v. *Carignan, supra.*

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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